



## **DEPARTMENT OF COMMERCE**

### **Bureau of Industry and Security**

#### **15 CFR Parts 781 through 786**

**[Docket No. 211210-0258]**

**RIN 0694-AH95**

### **Additional Protocol Regulations: Mandatory Electronic Submission of Reports through the Additional Protocol Reporting System (APRS)**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The Additional Protocol is an agreement between the United States and the International Atomic Energy Agency (IAEA) to allow monitoring and reporting of certain civil nuclear fuel cycle-related activities. The Bureau of Industry and Security (BIS) administers the Additional Protocol Regulations (APR), which implement the provisions of the Additional Protocol affecting U.S. industry and other U.S. persons engaged in certain civil nuclear fuel cycle-related activities that are not regulated by the U.S. Nuclear Regulatory Commission (NRC), or its domestic Agreement States, and are not situated at certain U.S. government

locations. The APR describe the requirement to report such activities to BIS, as well as the conduct of on-site activities in conjunction with IAEA complementary access to locations where such civil nuclear fuel cycle-related activities take place. This rule proposes to amend the APR to replace the existing manual reporting and processing procedures with a mandatory requirement to submit reports and other documents on-line through the Additional Protocol Reporting System (APRS). As a result of this proposed change, all persons and locations in the United States that are subject to the reporting requirements in the APR would be required to register on-line to set up an APRS account, submit reports and other documents to BIS via APRS, and maintain current user account information in APRS. This rule also proposes to amend the APR to clarify and update other requirements (e.g., by removing the provisions that address the *Initial Report* requirements for calendar year 2008, replacing the provisions that address *Amended Report* requirements, and revising the definitions of certain terms used in the APR).

**DATES:** Comments must be received by BIS no later than [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by docket number BIS-2021-0034 or RIN 0694-AH95, through any of the following:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. You can find this proposed rule by searching for its regulations.gov docket number, which is BIS-2021-0034.
- *E-mail:* [PublicComments@bis.doc.gov](mailto:PublicComments@bis.doc.gov). Include RIN 0694-AH95 in the subject line of the message.

All filers using the portal or e-mail should use the name of the person or entity submitting the comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The corresponding non-confidential version of those comments must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments. Any submissions with file names that do not begin with a “P” or “BC” will be assumed to be public and will be made publicly available through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general information on APR requirements, including the APRS requirements proposed by this rule, contact Hung Ly, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, E-mail: [Hung.Ly@bis.doc.gov](mailto:Hung.Ly@bis.doc.gov). For questions on the submission of comments in response to this proposed rule, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, E-mail: [RPD2@bis.doc.gov](mailto:RPD2@bis.doc.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America (hereinafter referred to as the “Additional Protocol” or “AP”) was developed to strengthen existing verification agreements established under the International Atomic Energy Agency (IAEA) safeguards regime and to promote the non-proliferation of nuclear weapons, which is a cornerstone of U.S. foreign and national security policy. The U.S. Additional Protocol requires the United States to declare to the IAEA a number of commercial nuclear and nuclear-related items, materials, and activities that have peaceful nuclear applications, but are also necessary elements for a nuclear weapons program.

To obtain the information needed to prepare the U.S. Declaration under the Additional Protocol, BIS administers the Additional Protocol Regulations (APR) (15 CFR 781-786) reporting requirements related to: (1) nuclear fuel cycle research and development activities not involving nuclear materials; (2) nuclear-related manufacturing, assembly, or construction activities; and (3) uranium hard-rock mining or ore beneficiation activities. Currently, U.S. industry and other U.S. persons with reportable activities submit their AP reports via facsimile, hand delivery, courier or the mail, using paper forms. BIS uses a manual process to receive and process these reports, to draft the U.S. Declaration for interagency review and approval, and to deliver the U.S. Declaration to the IAEA.

To facilitate compliance with the reporting requirements in the APR, BIS has developed the Additional Protocol Reporting System (APRS), an Internet-based application, for industry to use to prepare and submit AP reports. APRS is a user-friendly, time-saving tool that will reduce the burden on industry related to the

preparation and submission of these reports. Accordingly, BIS is proposing to amend the APR to replace the existing manual reporting requirement (i.e., submission via facsimile, hand delivery, courier or the mail, using paper forms) with a requirement that all persons and locations with reportable activities register on-line for an APRS account and electronically submit their reports through APRS thereafter.

This proposed APRS electronic submission requirement would be mandatory only for the BIS administered AP reporting requirements described in § 783.1 of the APR. This APRS submission requirement would not be mandatory for information submitted in accordance with the AP-related reporting requirements in the regulations administered by the Nuclear Regulatory Commission (NRC), as follows: (1) information concerning exports of nuclear facilities and equipment and non-nuclear materials (nuclear grade graphite for nuclear end use and deuterium) listed in Annex II of the Additional Protocol and submitted in accordance with 10 CFR 110.54(a); (2) facility information described in 10 CFR 75.10(b)(5) and submitted in accordance with 10 CFR 75.6(c) and 75.10(e); and (3) location information described in 10 CFR 75.11(b) and submitted in accordance with 10 CFR 75.6(d) and 75.11(c). Consequently, locations and sites subject to these NRC reporting requirements would have the option of continuing to submit their AP reports to BIS manually, in accordance with the instructions provided in the aforementioned NRC regulations, or registering for access to submit their reports electronically to BIS via APRS (provided that the locations and sites otherwise satisfy their NRC reporting requirements).

In addition to proposing the mandatory electronic submission of AP reports via APRS, this rule proposes to amend the APR to: (1) clarify the uranium hard-rock mine and ore beneficiation activities that are subject to the reporting requirements in the APR;

(2) remove the provisions that address the outdated requirement to submit *Initial Reports* covering calendar year 2008 activities; (3) replace the APR provisions that address the submission of amendments to AP reports with provisions requiring that such information be submitted through APRS; and (4) make miscellaneous updates and clarifications.

## **I. Establishment of mandatory requirement to submit AP reports via APRS.**

### ***Part 781 (General Information and Overview).***

This rule proposes to amend § 781.1 of the APR (Definitions of Terms) by adding a definition of the *Additional Protocol Reporting System (APRS)*. This definition would describe APRS as “the automated tool for persons or locations to submit electronic AP reports on nuclear fuel cycle related activities to BIS via the Internet.”

### ***Part 782 (General Information Regarding Reporting Requirements).***

The most extensive and substantive amendments related to the establishment of APRS are proposed to the provisions in part 782 of the APR.

First, this rule proposes to replace the last two sentences in § 782.1 of the APR, which currently provide information on how to obtain hard copies of AP report forms, with a sentence instructing persons or locations subject to the APR reporting requirements to submit their AP reports via APRS in accordance with the instructions provided in §§ 782.5 and 782.6 of the APR (as proposed to be amended by this rule).

Second, this rule proposes to amend § 782.5 of the APR to indicate that persons and locations subject to the reporting requirements described in § 783.1 of the APR must submit their AP reports to BIS via the Internet, using their APRS account. Section 782.5 also would be amended to indicate that BIS would provide persons and locations subject to the reporting requirements in the APR with information on how to use APRS (including the roles of the account administrator and individual users and how to electronically file AP reports with BIS) as part of the APRS registration process. Furthermore, this section would indicate that the AP Forms required to submit these reports, including the due dates of the reports, are identified in supplement no. 1 to part 783 of the APR and may be accessed via the location's APRS account. The AP website maintained by BIS at <https://www.bis.doc.gov/index.php/other-areas/additional-protocol-ap>, as updated to address the mandatory APRS requirements proposed in this rule for the submission of AP reports required by the APR (e.g., by including an "*Additional Protocol Reporting System (APRS) User Manual*"), also would be referenced in § 782.5 as another source of information on how to comply with the AP reporting requirements.

Third, this rule proposes to revise § 782.6 of the APR to require U.S. persons or locations with reportable activities under the APR to register on-line with BIS to request the establishment of a user account for the purpose of electronically submitting AP reports through the APRS. Specifically, each person or location with reportable activities under the APR, as proposed to be amended by this rule, would be required to designate at least one individual who would be authorized to act on behalf of that person or location as an APRS account administrator. The account administrator would be responsible for registering to open an account under APRS for the purpose of submitting AP reports to BIS on behalf of the person or location.

To register for an account in APRS, the account administrator would visit the APRS login page, at <http://www.ap.gov/XXXX>, and provide the following information to BIS: (1) the

name and address of the person or location with reportable activities; and (2) the account administrator's name, telephone and facsimile numbers, and e-mail address. The account administrator also would be required to certify the person's or location's compliance with the requirements of the APR, including any requirements pertaining to the authorized use of APRS. Upon receiving the registration request to open an APRS account, BIS would send a confirmation e-mail to the account administrator and also verify the account administrator's credentials. If the request for opening an account to access APRS is approved by BIS, a second e-mail would be sent to the account administrator with a password reset link for logging into the APRS account.

Following BIS's approval of the registration request for an APRS account, the account administrator would be authorized to add or remove individual users, who would be able to use the account to view, add, edit and submit AP reports to BIS on behalf of the person or location with whom the account administrator's registration is affiliated. In addition, the account administrator would be authorized to designate other individual users to act as an account administrator on behalf of the same person or location. Any individual user so designated would possess all the authority of an account administrator for that person or location. Account administrators also would be able to deactivate the account of an individual user or reactivate the account of a previously deactivated individual user.

For persons and locations that have previously submitted a report pursuant to the APR, BIS would notify the AP report point of contact (POC), via e-mail, indicating the date on which electronic submission of AP reports under APRS would become mandatory and instructing the POC or designated organization administrator on how to register on the APRS login page, at <https://www.ap.gov/XXXX>, to request the creation of an account in APRS. This e-mail also would describe how to use APRS, including the roles of the



account administrator and individual users (as proposed in § 782.6 “Registering for electronic submission of Additional Protocol reports”).

As a result of these proposed amendments to §§ 782.5 and 782.6 of the APR, all reports required under the APR would have to be submitted electronically using APRS, instead of manually, as is currently the case. However, the information collected and reported electronically under APRS would be the same type of information that is currently required to be submitted using paper AP report forms. BIS expects that the implementation of APRS would, over time, reduce industry’s processing times and errors (e.g., through APRS’s copy feature, the ability of users to update personal contact information, and the relative ease of use compared with the current manual reporting system).

***Part 783 (Civil Nuclear Fuel Cycle-Related Activities not Involving Nuclear Materials).***

This rule proposes to amend § 783.1 (Reporting Requirements) to include a number of specific references to the mandatory APRS electronic registration and reporting requirements described in §§ 782.5 and 782.6, as proposed to be amended by this rule. BIS also is proposing a similar conforming change in the introductory text of § 783.4 (Deadlines for Submission of Reports).

**II. Clarification of reportable hard-rock mining and ore beneficiation activities.**

To clarify the types of uranium hard-rock mines and ore beneficiation plants that are subject to the reporting requirements of the APR and to ensure that the description of these mines and plants in the APR is consistent with the terminology used in the Additional Protocol, this rule proposes to amend § 781.1 of the APR by: (1) adding a definition for “*Uranium Hard-Rock*

*Mine (Decommissioned);*” (2) revising the definitions of “*Uranium Hard-Rock Mine (Closed-down)*” and “*Uranium Hard-Rock Mine (Operating)*;” and (3) removing the definition of “*Uranium Hard-Rock Mine (Suspended)*.”

The proposed addition of the definition “*Uranium Hard-Rock Mine (Decommissioned)*” reflects the use of the term “decommissioned” in a manner similar to its use in the Additional Protocol to describe certain “facilities” or “locations outside facilities.” As proposed in this rule, the definition of “*Uranium Hard-Rock Mine (Decommissioned)*” refers to “a uranium hard-rock mine or ore beneficiation (concentration) plant where all of the structures and equipment essential for ore operations have been removed and the location can no longer be used to extract or process ore.”

The proposed changes to the definition of “*Uranium Hard-Rock Mine (Closed-down)*” are intended to make this definition more closely reflect the use of the term “closed-down” as it is applied to describe certain “facilities” or “locations outside facilities” in the Additional Protocol. Specifically, this rule proposes to revise the definition of “*Uranium Hard-Rock Mine (Closed-down)*” to mean “a uranium hard-rock mine or ore beneficiation (concentration) plant where all ore operations have ceased, but the structures and equipment essential for ore operations have not been decommissioned.” Consequently, the definition of “*Uranium Hard-Rock Mine (Closed-down)*,” as proposed to be revised by this rule, would replace the definition of “*Uranium Hard-Rock Mine (Suspended)*,” which would be removed because the term “suspended” neither appears, nor is described, in any of the definitions in the Additional Protocol.

This rule also proposes to revise the definition of “*Uranium Hard-Rock Mine (Operating)*,” consistent with the definitions described above, to mean “a uranium hard-rock

mine or ore beneficiation (concentration) plant where ore is extracted or processed on a routine basis.” This proposed change would not, in any way, affect the scope or substance of this definition. Instead, it would clarify that the uranium hard-rock mining activities subject to the reporting requirements in the APR may include ore beneficiation (concentration) activities, in addition to the actual extraction of natural deposits from the ground – see § 781.1 of the APR, definition of “*Uranium Hard-Rock Mine*,” paragraph (3).

In addition, this rule proposes to amend the APR to make conforming changes to the “*Initial Report*” requirements in § 783.1(a)(3) and the annual reporting requirements in § 783.1(b)(3)(iii), consistent with the amendments to the uranium hard-rock mine definitions described above.

### **III. Removal of *Initial Report* requirements covering calendar year 2008 Activities.**

This rule proposes to amend § 783.1(a) introductory text and (a)(3), § 783.4(a) and Supplement No. 1 to part 783 of the APR to remove references to calendar year 2008 activities (including the due date for reporting such activities) from the *Initial Report* requirements. This change is proposed on the basis that the *Initial Report* requirements in the APR that are specific to calendar year 2008 activities address reportable activities that took place on or before the October 31, 2008, effective date of the APR final rule (73 FR 65120) and therefore were required to have been reported to BIS no later than December 1, 2008. Consequently, these *Initial Report* requirements for calendar year 2008 are no longer necessary. However, this rule does not propose to change the current requirement that reports for activities commencing after the October 31, 2008, effective date of the APR final rule must be submitted to BIS no later than January 31 of the year following any calendar year in which the activities began.

**IV. *Supplemental Information Report* to replace *Amended Report* as means to notify BIS of changes to information contained in previously submitted AP reports.**

This rule proposes to amend § 783.2 of the APR by replacing the current *Amended Reports* requirements with a requirement to report changes to reportable activities or location information contained in a person's or location's most recent AP report through the submission of a Supplemental Information Report (Form AP-15) to BIS via APRS. This change is proposed on the basis that the Additional Protocol Annual Update Declaration is comprised of an aggregate of data based on reports from locations and sites, as well as reports from other U.S. Government agencies. All of the information contained in the U.S. Declaration must undergo interagency review and clearance (referred to as "vetting") before the Declaration can be submitted to the IAEA. The compilation of the reports and the interagency vetting process takes place once each year. Similarly, any information contained in *Amended Reports* also must be vetted before submission to the IAEA. BIS has determined that, under the current procedures, the information contained in *Amended Reports* generally cannot be processed in time to be included when the U.S. Declaration is submitted to the IAEA, and that it is not practical to submit such information to the IAEA afterwards (i.e., separately from the U.S. Declaration). Consequently, the proposed APRS would not be designed to provide for the submission of *Amended Reports*. Instead, BIS proposes to amend § 783.2 to require that APRS account administrators and individual users notify BIS of changes to reportable activities and organization and location information contained in their most recent AP reports by submitting these changes to BIS in a *Supplemental Information Report* (Form AP-15) via APRS, as provided in §§ 782.5 and 782.6 of the APR, thereby ensuring that BIS would continue to have timely access to such information for purposes of meeting its responsibilities under the APR.

To reflect the elimination of the *Amended Report* requirements from the APR, this rule

proposes to amend § 782.1 (Overview of reporting requirements) to remove the reference to submitting *Amended Reports* to BIS. Because the overview in § 782.1 already references the *Supplemental Information Report* (which would be submitted to BIS to indicate changes to reportable activities and organization and location information, under the circumstances described above), no additional change to the text in this section is proposed by this rule, in this regard. In addition, BIS proposes to amend § 783.4 (Deadlines for submission of reports) by: (1) revising the introductory text to remove all references to *Amended Reports*; (2) revising paragraph (e) to indicate that a *Supplementary Information Report* must be submitted to BIS either in response to a written notification from BIS, following its receipt of a specific request from the IAEA, or to report changes to information contained in a location's most recent AP report; and (3) removing paragraph (f), which currently addresses *Amended Reports*.

Supplement No. 1 to part 783 (Deadlines for Submission of Reports) is proposed to be amended to remove the row in the table that currently addresses the AP forms and due dates for submission of *Amended Reports* to BIS and to revise the row in the table that addresses the AP forms and due dates for *Supplemental Information Reports* to reference the requirement that Form AP-15 must be submitted to BIS within 30 calendar days after any of the following: (1) the receipt of a post-complementary access letter from BIS; (2) the discovery of an error or omission in activity information in the location's most recent AP report; or (3) a change in company information or in ownership of the location. Also, § 784.6 (Post complementary access activities) is proposed to be amended by revising the parenthetical at the end of the section to remove the reference to *Amended Report* requirements.

## **V. Miscellaneous amendments to the APR.**

Section 782.4(a)(1) of the APR, which addresses the submission of activity determination requests to BIS, is proposed to be amended to remove and replace the current e-mail address

identified therein (i.e., [apdr@bis.doc.gov](mailto:apdr@bis.doc.gov)) with the e-mail address [aprp@bis.doc.gov](mailto:aprp@bis.doc.gov). Section 782.4(b) is proposed to be amended to clarify the procedures for obtaining verbal or written guidance from BIS concerning other requirements in the APR – these changes would include, *inter alia*, updates to the instructions on how to submit requests for written guidance from BIS.

Supplement No. 1 to part 783 of the APR is proposed to be amended to clarify, within the text identifying the due date for *Annual Update Reports*, the circumstances under which such reports must be submitted.

The legal authorities for 15 CFR parts 781 through 786 are revised by removing the reference to the applicable public law (i.e., the United States Additional Protocol Implementation Act of 2006, Pub. Law No. 109-401) and the U.S. Statutes at Large citation therefor (i.e., 120 Stat. 2726 (December 18, 2006)), consistent with the requirements of *Document Drafting Handbook* (Office of the Federal Register). Because the Additional Protocol Implementation Act has been codified, the relevant provisions of the United States Code (i.e., 22 U.S.C. 8101-8181) are the only statutory authority that needs to be cited.

## **Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including: potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits and of reducing costs, harmonizing rules, and promoting flexibility. This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule contains the following collection of information subject to the requirements of the PRA. This collection has been approved by OMB under control number 0694-0135 (Additional Protocol to the U.S.—International Atomic Energy Agency Safeguards). The approved information collection under OMB control number 0694-0135 for submitting Additional Protocol (AP) reports by Department of Commerce (DOC) and Nuclear Regulatory Commission (NRC) locations and NRC sites, as required by the Additional Protocol Regulations (APR), carries a total burden estimate of 920.3 hours per annum. The total burden under this information collection for DOC and NRC locations is estimated to be 390.2 hours per annum. The total burden under this information collection for NRC sites is estimated to be 530.1 hours per annum. These total estimated burden hours carry a burden estimate ranging between as few as 23 minutes and as much as 6 hours, per response, and are based upon the sum of the number of forms submitted for each activity multiplied by the estimated average number of hours needed to complete each type of report form (the estimated average number of hours, per each type of report, is based on the responses provided by persons, locations and sites to a survey conducted by BIS's Office of Strategic Industries and Economic Security). The total estimated burden hours also include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The estimated annual cost to all respondents (locations and sites) of preparing and submitting the reports required under the APR is \$42,054. The cost per hour for the respondents was derived from the cost per hour of the salaries and overhead of the Federal employees

working on this project. Thus, the estimated total annual cost burden to all respondents for these activities is  $920.3 \text{ hours} \times \$38.08/\text{hour (GS-13 Step 1)} \times 1.2 \text{ (20\% Overhead)} = \$42,054$ .

This approved information collection also involves a recordkeeping requirement of three years, as specified in § 786.2 of the APR. The estimated recordkeeping cost for this collection is \$675. Each AP report submitted to BIS averages around 25 pages of supporting documents that can be stored in a filing cabinet occupying 0.15 square feet of office space. The average estimated cost of office space in the Washington, DC area is around of \$45/sq. ft. /year. Applying this cost to the approximately 100 respondents, per annum, who submit AP reports to BIS yields an estimated annual recordkeeping cost for this information collection of \$675 ( $0.15 \text{ sq.ft.} \times \$45/\text{sq.ft.} \times 100 \text{ reports}$ ).

The estimated total annual cost to all locations and sites of preparing and submitting their AP reports to BIS, together with the recordkeeping costs associated with these reports, is \$42,729 [ $\$42,054 \text{ (annual cost of preparing and submitting AP reports)} + \$675 \text{ (annual cost of complying with the APR recordkeeping requirements associated with these reports)} = \$42,729$ .]

Although this rule proposes to replace the current method of manually submitting AP reports (e.g., via facsimile, hand delivery, courier, or the mail using paper forms) with a mandatory internet-based system (i.e., the APRS) for the electronic submission of such reports, BIS believes that the total impact (i.e., in terms of costs and burden hours) on those persons, locations or sites subject to this reporting requirement would be minimal if implemented in a final rule. Specifically, BIS expects that the burden hours associated with this approved collection would remain essentially unchanged, at least in the short term, due to the one-time additional burden that persons, locations or sites would incur as a result of switching over from the current manual AP reporting system to the Internet-based APRS. Consequently, the



immediate effect of this proposed change to the AP reporting system would fall well within the existing burden estimate currently associated with OMB control number 0694-0135 (i.e., rounded to 920 burden hours). However, once persons, locations or sites have completed the initial setup phase for APRS, BIS expects there to be at least a modest reduction in the total burden hours associated with this information collection. Although the information collected and reported electronically under APRS would be the same information that is currently required to be submitted using paper AP report forms, BIS expects that the implementation of APRS would reduce industry's processing times and errors (e.g., through the APRS's copy feature and the ability to update personal contact information, as well as the relative ease of use compared with the current manual reporting system).

Written comments and recommendations for the information collection referenced above should be sent within 30 days of the publication of this final rule to: [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Notwithstanding, BIS believes this rule would benefit from public comment prior to issuance. Consistent with the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 *et seq.*), BIS has prepared the following initial regulatory flexibility analysis (IRFA)

of the impact that this proposed rule, if adopted, would have on small businesses.

#### *Description of the Reasons Why Action Is Being Considered*

The policy reasons for issuing this proposed rule are discussed in the background section of the preamble of this document and, consequently, are not repeated here.

#### *Statement of the Objectives of, and Legal Basis for, the Proposed Rule; Identification of All Relevant Federal Rules Which May Duplicate, Overlap or Conflict with the Proposed Rule*

The objective of the amendments proposed by this rule is to facilitate the compliance of locations and sites who have reporting requirements under the APR by implementing the Additional Protocol Reporting System (APRS), an Internet-based application designed for industry to use in preparing and submitting reports required by the APR. The legal basis for this proposed rule is as follows: 22 U.S.C. 8101-8181; Executive Order 13458 (February 4, 2008).

No other federal rules duplicate, overlap, or conflict with this proposed rule.

#### *Number and Description of Small Entities Regulated by the Proposed Action*

This proposed rule would apply to locations and sites who are engaged in certain civil nuclear fuel cycle-related activities that are not regulated by the NRC, or its domestic Agreement States, and are not situated at certain U.S. government locations. The APR require that such activities be reported to BIS, and also contain requirements concerning the conduct of on-site activities in conjunction with IAEA complementary access to locations where such civil nuclear fuel cycle-related activities take place. Currently, these reports are submitted to BIS via

facsimile, hand delivery, courier, or the mail using paper forms. This rule proposes to amend the APR to replace the existing manual reporting and processing procedures with a mandatory requirement to submit reports and other documents through an on-line application known as the Additional Protocol Reporting System (APRS).

BIS does not collect or maintain the data necessary to determine how many of the affected persons or locations are small entities as that term is used by the Small Business Administration. However, BIS does maintain data on the number of AP reports that the agency receives, annually, in response to the reporting requirements of the APR, and is using these data as a means of assessing the impact that the changes proposed in this rule would have on small businesses.

Based on the data provided for calendar year 2019, in BIS's most recent Supporting Statement for the information collection approved under OMB control number 0694-0135, there are approximately 300 AP report forms submitted to BIS, per annum, in accordance with the requirements of the APR. Specifically, the number of AP report forms submitted to BIS by Department of Commerce (DOC) locations for reportable activities during calendar year 2019 was approximately 115 forms. Nuclear Regulatory Commission (NRC) locations submitted approximately 85 AP report forms to BIS for their 2019 reportable activities, while NRC sites submitted approximately 108 AP report forms. Based on these data, the actual total number of AP report forms submitted to BIS was slightly in excess of 300 forms for reportable 2019 activities  $[115 \text{ (forms submitted by DOC locations)} + 85 \text{ (forms submitted by NRC locations)} + 108 \text{ (forms submitted by NRC sites)} = 308 \text{ total AP report forms}]$ .

The aforementioned BIS Supporting Statement and the information collection approved under OMB control number 0694-0135 estimate the total number of AP reports submitted to BIS

per annum, instead of indicating the estimated number of entities (i.e., persons having locations or sites subject to the reporting requirements in the APR) who must submit such reports each year. However, the total number of such entities would be less than the total number of AP reports submitted per annum. This is because a significant number of entities submit more than one type of AP report to BIS per annum. In its 2008 Supporting Statement for the information collection approved under OMB 0694-0135, BIS estimated that 129 entities, annually, would submit AP reports. Based on actual reporting data compiled by BIS since 2008, BIS now estimates that approximately 100 entities, annually, would be affected by the changes proposed by this rule.

As indicated in the preamble of this proposed rule, participation in APRS would be mandatory only for those entities having one or more locations or sites subject to the reporting requirements described in § 738.1 of the APR. For location and site information that is subject to the AP reporting requirements in the NRC's regulations (i.e., information concerning exports of nuclear facilities and equipment and non-nuclear materials as submitted per 10 CFR 110.54(a), facility information described in 10 CFR 75.10(b)(5) and submitted per 10 CFR 75.6(c) and 75.10(e), and location information described in 10 CFR 75.11(b) and submitted per 10 CFR 75.6(d) and 75.11(c)), participation in APRS would be optional. Nevertheless, for purposes of this analysis, and to ensure that the potential impact of the proposed changes in this rule on small entities is not underestimated, BIS estimates that there would be approximately 100 entities having locations or sites that would be affected by the changes to the APR reporting requirements proposed by this rule.

Although BIS estimates that the majority of these entities are substantially sized entities, having more than 500 employees, BIS does not have sufficient information on these businesses and organizations to definitively characterize them as large entities. The Small Business

Administration (SBA) has established standards for what constitutes a small business, with respect to each of the Standard Industrial Classification (SIC) code categories. For example, a business in the uranium mining industry (NAICS Code: 212291, SIC Code: 1094), is considered by SBA to be a small business if it is independently owned and operated and not dominant in its field of operation and it employs 500 or fewer persons on a full-time basis, part-time, temporary, or other basis. The Mine Safety and Health Administration (MSHA) estimates that approximately 99.8% of the metal/non-metal mining industry would qualify as small businesses. However, many of the uranium mining and milling entities in the United States appear to be subsidiaries of large companies and BIS estimates that most of the small entities likely to be impacted by the AP reporting changes proposed by this rule would fall within one of the following categories: (1) colleges and universities; (2) nuclear fuel manufacturers and utility companies; or (3) corporate entities and contractors involved in research and development, manufacturing, assembly and construction activities. In addition, BIS is not able to determine which SIC code categories apply to other locations or sites that are likely to be impacted by the AP reporting changes proposed by this rule. Therefore, for the purpose of assessing the impact of this proposed rule, BIS assumes that all of the approximately 100 entities having locations and sites that are likely to be affected by the proposed changes are small entities. Although this proposed rule would likely affect a substantial number of small entities (i.e., approximately 100 entities having such locations and sites), the implementation of APRS is not expected to have a significant economic impact on these entities.

As indicated in the PRA analysis for this rule (see Rulemaking Requirements #2, above), the total estimated annual burden hours for preparing and submitting AP reports to BIS is 920.3 hours and the total estimated annual cost is \$42,054 [920.3 hours x \$38.08/hour (GS-13 Step 1) x 1.2 (20% Overhead) = \$42,054]. In addition, BIS estimates that the total annual cost to locations and sites for satisfying the recordkeeping requirement of three years, as specified in § 786.2 of

the APR, is \$675 (see the PRA analysis in Rulemaking Requirements #2, above).

The total estimated annual burden hours required to comply with the AP reporting and recordkeeping requirements described above would be 920 burden hours and the total estimated annual cost would be \$42,729. Although the primary impact of these new requirements would affect a substantial number of small entities (i.e., approximately 100 entities having locations or sites subject to the reporting requirements in the APR), the total economic impact on the affected entities (i.e., \$42,729 per annum, for all of the affected entities) would not be significant. The average impact per entity would be slightly more than \$427 (i.e.,  $\$42,729 \div 100$ ) per annum, which represents a small percentage of the net annual revenue of a typical small business.

Based on the analysis provided above, the amendments proposed in this rule would not impose a significant economic impact on a substantial number of small businesses.

*Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule*

The changes proposed in this rule, if adopted, would mean that the AP reports required under § 783.1 of the APR, which currently must be submitted to BIS via facsimile, hand delivery, courier, or the mail using paper forms, would have to be submitted electronically to BIS using APRS. Neither the scope nor the type of information that would have to be reported to BIS would be affected by these proposed changes. In addition, although the changes proposed by this rule might result in more records being maintained electronically than is currently the case, the scope of the recordkeeping requirements described in § 786.2 of the APR would not be affected as a result of the changes proposed by this rule.

Furthermore, this proposed mandatory APRS electronic submission requirement would apply only to those locations and sites subject to the BIS administered reporting requirements described in § 783.1 of the APR. Locations and sites whose information is subject to the AP reporting requirements in the NRC's regulations (as described above, under the subheading "*Number and Description of Small Entities Regulated by the Proposed Action*"), would not be subject to this proposed APRS requirement. Consequently, locations and sites that are subject to these NRC regulations would have the option of continuing to submit their AP reports to BIS manually or registering for access to submit their reports electronically to BIS via APRS (provided that the locations and sites otherwise satisfy their NRC reporting requirements).

To the extent that compliance with the changes proposed in this rule would impose a burden on entities, including small businesses, BIS believes the burden would be minimal. As indicated in the above analysis of the description and number of small entities likely to be affected by these proposed changes, these new APRS submission requirements would affect a substantial number of small entities (i.e., approximately 100 entities having locations or sites subject to the reporting requirements in the APR), but the total economic impact on the affected entities (i.e., \$42,729 per annum, for all of the affected entities) would not be significant. The average impact per entity would be slightly more than \$427 (i.e.,  $\$42,729 \div 100$ ) per annum, which represents a small percentage of the net annual revenue of a typical small business. In addition, once these entities have completed the initial setup phase (including registration) for using APRS to submit their AP reports, BIS expects there to be at least a modest reduction in the total burden hours associated with the information collection approved under OMB control number 0694-0135. Although the information collected and reported electronically under APRS would be the same information that is currently required to be reported via facsimile or using paper AP report forms, BIS anticipates that the implementation of APRS would reduce industry's processing times and errors (e.g., through the APRS's copy feature and the ability to

update personal contact information, as well as the relative ease of use compared with the current manual reporting system).

### *Significant Alternatives and Underlying Analysis*

As noted above, BIS does not believe that the amendments proposed in this rule, if implemented in a final rule, would have a significant economic impact on small businesses. Nevertheless, as required by 5 U.S.C. 603(c), BIS considered significant alternatives to these proposed amendments to assess whether the alternatives would: (1) accomplish the stated objective of this rule (i.e., to facilitate the compliance of locations and sites with the reporting requirements in the APR); and (2) minimize any significant economic impact of this rule on small entities.

BIS could have proposed more extensive changes to the reporting requirements in the APR to further facilitate compliance of affected locations and sites with these requirements. However, the changes proposed by this rule should be viewed in light of the fact that BIS's discretion in addressing the reporting requirements of the APR is limited by the necessity of meeting U.S. obligations under the Additional Protocol. The Additional Protocol specifies the information that the United States must declare to the IAEA. Nevertheless, in addressing these requirements in this proposed rule, BIS has attempted to minimize the recordkeeping and reporting burden by: (1) ensuring that only information that the United States must declare to the IAEA will have to be reported to BIS; and (2) making the process by which this information must be submitted to BIS as seamless as possible (e.g., in terms of ease of use and costs) for affected locations and sites.

BIS is not proposing different compliance or reporting requirements for small businesses.



If a small business is subject to a reporting requirement under the APR, then it would submit an AP report using the same process as any other company (i.e., electronically via APRS). This submission process is free of charge to all entities, including small businesses. In addition, the resources made available by BIS to locations and sites subject to the reporting requirements in the APR (e.g., the procedures for requesting assistance from BIS, as described in § 782.4 of the APR, and the AP website maintained by BIS at <https://www.bis.doc.gov/index.php/other-areas/additional-protocol-ap>, which would be updated to address the proposed mandatory APRS requirements) typically serve to lessen the impact of these requirements on small businesses.

Lastly, as required under 5 U.S.C. 603(c), BIS assessed the use of performance standards rather than design standards and also considered whether an exemption for small businesses was practical under the circumstances (i.e., within the context of the changes proposed in this rule).

This rule proposes the establishment of a mandatory internet-based AP reporting submission requirement (i.e., APRS) for entities having locations or sites subject to the reporting requirements in the APR, in lieu of providing other options for submitting these reports, because BIS anticipates that the implementation of APRS would provide the most effective approach for reducing industry's processing times and errors (e.g., through the APRS's copy feature and the ability to update personal contact information, as well as the relative ease of use compared with the current manual reporting system). After initially implementing an AP reporting system based on the submission of reports via facsimile, hand delivery, courier, or the mail using paper forms, BIS concluded that an electronic AP reporting system based on specific design standards would be the most appropriate way to achieve these objectives. Furthermore, the approach proposed in this rule would facilitate compliance with these AP reporting requirements while, at the same time, reducing the cost to locations and facilities of such compliance, over the long term.

This rule does not propose to exempt small businesses from the requirement to use APRS to submit their AP reports, because BIS and its interagency partners have determined that this new electronic submission process will facilitate the efforts of locations and sites to submit their AP reports to BIS by providing an approach that would be less time consuming and more cost effective, irrespective of the size of the entity. This approach also would ensure more timely and accurate reporting of the information needed by BIS to prepare the U.S. declaration for submission to the IAEA. Consequently, an exemption for small businesses would undermine the effectiveness of the changes proposed by this rule.

### *Conclusion*

Although BIS has determined that the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)), BIS believes that this rule would benefit from public comment, prior to issuance, and has prepared this initial regulatory flexibility analysis (IRFA), consistent with the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), of the impact that this proposed rule, if adopted, would have on small businesses.

Please submit any comments concerning this IRFA in accordance with the instructions provided in the “ADDRESSES” section of this proposed rule.

### **List of Subjects**

Imports, Nuclear energy, Reporting and recordkeeping requirements, Treaties.

*15 CFR Parts 782 and 786*

Nuclear energy, Reporting and recordkeeping requirements.

*15 CFR Parts 783 and 784*

Imports, Nuclear energy, Reporting and recordkeeping requirements.

*15 CFR Part 785*

Administrative practice and procedure.

For the reasons stated in the preamble, parts 781 through 786 of the Additional Protocol Regulations (15 CFR parts 781-786) are proposed to be amended as follows:

**PART 781 – [AMENDED]**

1. The authority citation for 15 CFR part 781 is revised to read as follows:

*Authority:* 22 U.S.C. 8101-8181; Executive Order 13458 (February 4, 2008).

2. Section 781.1 is amended:

- a. By adding, in alphabetical order, the definition for “Additional Protocol Reporting System (APRS)”;
- b. By revising the definition of “Uranium Hard-Rock Mine (Closed-down)”;
- c. By adding, in alphabetical order, the definition for “Uranium Hard-Rock Mine (Decommissioned)”;

d. By revising the definition of “Uranium Hard-Rock Mine (Operating)”; and

e. By removing the definition of “Uranium Hard-Rock Mine (Suspended)”.

The additions and revisions read as follows:

**§ 781.1 Definitions of terms used in the Additional Protocol Regulations (APR).**

\* \* \* \* \*

*Additional Protocol Reporting System (APRS).* The automated tool for persons or locations to submit electronic AP reports on nuclear fuel cycle related activities to BIS via the Internet.

\* \* \* \* \*

*Uranium Hard-Rock Mine (Closed-down).* A uranium hard-rock mine or ore beneficiation (concentration) plant where all ore operations have ceased, but the structures and equipment essential for ore operations have not been decommissioned.

*Uranium Hard-Rock Mine (Decommissioned).* A uranium hard-rock mine or ore beneficiation (concentration) plant where all of the structures and equipment essential for ore operations have been removed and the location can no longer be used to extract or process ore.

*Uranium Hard-Rock Mine (Operating).* A uranium hard-rock mine or ore beneficiation (concentration) plant where ore is extracted or processed on a routine basis.

\* \* \* \* \*

**PART 782 – [AMENDED]**

3. The authority citation for 15 CFR part 782 is revised to read as follows:

*Authority:* 22 U.S.C. 8101-8181; Executive Order 13458 (February 4, 2008).

4. Section 782.1 is revised to read as follows:

**§ 782.1 Overview of reporting requirements under the APR.**

Part 783 of the APR describes the reporting requirements for specified activities. For each activity identified in part 783, BIS may require that an *Initial Report*, an *Annual Update Report*, a *No Changes Report*, an *Import Confirmation Report* or a *Supplemental Information Report* be submitted to BIS. In addition, persons and locations subject to the APR may be required to provide BIS with information needed to assist the IAEA in clarifying or verifying information specified in the U.S. declaration or in clarifying or amplifying information concerning the nature of the activities conducted at a location (see §§ 783.1(d)(1) and 784.1(b)(2) of the APR for *Supplemental Information Report* requirements). If, after reviewing part 783 of the APR, you determine that you are subject to one or more reporting requirements, you must submit an electronic AP report to BIS via the Additional Protocol Reporting System (APRS) (see §782.6 of the APR for instructions on how to register on-line with BIS to submit electronic reports under APRS).

5. Section 782.4 is amended:
  - a. By revising the section heading;
  - b. By revising the heading of paragraph (a); and
  - c. By revising paragraphs (a)(1) and (b).

The revisions read as follows:

**§ 782.4 Requesting assistance from BIS to determine your AP reporting obligations.**

(a) *Activity determination requests.* (1) If you need assistance in determining whether or not your activity is subject to the reporting requirements in the APR, submit your written request for an activity determination to BIS. Such requests may be submitted to BIS electronically, via facsimile to (202) 482-1731 or by e-mail to [aprp@bis.doc.gov](mailto:aprp@bis.doc.gov), or in hard copy by hand delivery, courier or the mail to the following address: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Attn: AP Activity Determination Request, 14th Street and Pennsylvania Avenue, NW., Room 4515, Washington, DC 20230. Your activity determination request should include the information described in paragraph (a)(2) of this section to ensure an accurate determination. Also include any additional information that would be relevant to the activity described in your request. If you are unable to provide all of the information required in paragraph (a)(2) of this section, you must include an explanation identifying the reasons that preclude you from supplying such information to BIS. If BIS cannot make a determination based upon the information submitted with your request, BIS will send you written notification identifying the type of information required to complete the activity determination. BIS will provide a written response to your activity determination request, or send you written notification to submit additional information, within 10 business days of receipt of the request.

\* \* \* \* \*

(b) *Other requests for assistance—(1) Telephone inquiries.* If you need guidance in interpreting additional provisions of the APR, including APRS registration and reporting requirements, or need assistance with complementary access issues, you may contact BIS's Treaty Compliance Division, by phone, at (202) 482-1001.

(2) *Advisory opinion requests.* If you wish to obtain a written response from BIS to an

inquiry, you must submit a detailed written request to BIS that identifies the specific type of guidance or assistance needed. Submit your written request to BIS via facsimile or e-mail, or in hard copy, in accordance with the instructions provided for the submission of AP activity determination requests in paragraph (a)(1) of this section, and also include contact information as specified in paragraph (a)(2) of this section. To ensure that your request is properly routed, include the notation, “ATTENTION: AP Advisory Opinion Request,” on your submission to BIS. If BIS is unable to provide guidance or assistance based upon the information submitted with your request, BIS will send you written notification identifying the type of information required for BIS to respond to your request.

6. Sections 782.5 and 782.6 are revised to read as follows:

**§ 782.5 Requirement to submit AP reports to BIS via the Internet using APRS.**

Persons and locations subject to the reporting requirements described in § 783.1 of the APR must submit their Additional Protocol (AP) reports to BIS via the Internet, using their Additional Protocol Reporting System (APRS) account. Changes to information submitted by reportable locations in their most recent AP reports also must be submitted to BIS, via APRS, in accordance with the instructions provided in § 783.2 of the APR. Section 782.6 of the APR describes how to register for an APRS account. BIS will provide persons and locations subject to the AP reporting requirements with information on how to use APRS (including the roles of the account administrator and individual users and how to electronically file AP reports with BIS) as part of the APRS registration process. The specific AP Forms required to submit these reports, including due dates, are indicated in supplement no. 1 to part 783 of the APR. AP Forms may be accessed via the location’s APRS account. For additional information on how to prepare and submit AP reports, see the “*Additional Protocol Reporting System (APRS) User Manual*,” which

is located on the “Additional Protocol (AP)” website maintained by BIS, at:

<https://www.bis.doc.gov/index.php/other-areas/additional-protocol-ap-XX>.

#### **§ 782.6 Registration requirement for electronic submission of Additional Protocol reports.**

(a) *Scope.* This section describes the procedures for registering to submit electronic Additional Protocol (AP) reports to BIS. The procedures in this section apply to the submission of AP reports (as described in part 783 of the APR) from persons and locations in the United States with reportable activities.

(b) *Registering to use BIS’s Additional Protocol Reporting System (APRS).* Each person or location with reportable activities under the APR is required to designate at least one individual authorized to act on behalf of that person or location as an APRS account administrator. The account administrator is responsible for registering to open an account in APRS for the purpose of submitting AP reports to BIS on behalf of the person or location. To register for an account in APRS, the account administrator must visit the APRS login page, at <http://www.ap.gov/XXXX>, and provide the following information to BIS: the name of the company or organization, location name, personal information including mailing address, telephone number, facsimile number, and primary and secondary e-mail addresses. Account administrators must certify that they will abide by the requirements of the APR, including all requirements and procedures applicable to the authorized use of APRS. After receiving the account administrator’s registration request, BIS will send a confirmation e-mail to the account administrator. Once BIS has verified the account administrator’s credentials and granted access to APRS, BIS will send the account administrator another e-mail containing a password reset link for logging into APRS.

(c) *Role of the account administrator.* The account administrator, who serves as the authorized



representative of the person or location subject to reporting requirements under the APR, may designate individual users to have access to the APRS account to view, add, edit and submit AP reports to BIS on behalf of the same reportable person or location. The account administrator may designate an individual user to also act as an account administrator on behalf of the same person or location – any individual user so designated will also have the authority of an account administrator for that person or location. The account administrator also may deactivate the account of an individual user, including an individual user who is acting as an account administrator, or reactivate the account of a previously deactivated individual user or account administrator.

(d) *Role of the individual user.* An individual user designated in accordance with the requirements of paragraph (c) of this section may view, add, edit and submit reports required by part 783 of the APR.

(e) *Authorization to submit AP reports to BIS.* BIS may reject an electronic submission if it has reason to believe that the account administrator or individual user making the submission lacks the authority to do so. However, BIS is not obligated to verify that an account administrator or individual user has the necessary authorization to submit AP reports to BIS on behalf of a particular person or location and generally will treat account administrators and individual users as acting within their authority, in the absence of clear evidence to the contrary. When an individual user is no longer authorized to submit AP reports to BIS on behalf of a particular person or location, an account administrator for that person or location must act, promptly, to remove the individual user's access to the APRS account.

(f) *Requirement to update (or otherwise maintain the accuracy of) APRS account information—(1) Locations.* Account administrators must contact BIS via e-mail, at

aprp@bis.doc.gov, to update the location information associated with their APRS account (e.g., company or organization name, mailing address, e-mail address, and telephone and facsimile numbers) to ensure that such information remains current and accurate. (Also see § 783.2(b) of the APR for instructions on how to notify BIS, via APRS, if there are changes to reportable location information, including whether a reportable location is sold or purchased, or has gone out of business, since submission of its most recent *Initial Report*, *Annual Update Report*, or *No Changes Report* to BIS.)

(2) *Account administrators.* Account administrators must update their personal information (e.g., name, telephone number, facsimile number and e-mail address) as necessary, via the *User Profile* in their APRS account, to ensure that such information remains current and accurate.

(3) *Individual users.* Individual users must update their personal information (e.g., name, telephone number, facsimile number and e-mail address) as necessary, via the *User Profile* in their APRS account, to ensure that such information remains current and accurate.

## **PART 783 – [AMENDED]**

7. The authority citation for 15 CFR part 783 is revised to read as follows:

*Authority:* 22 U.S.C. 8101-8181; Executive Order 13458 (February 4, 2008).

8. Sections 783.1 through 783.4 are revised to read as follows:

### **§ 783.1 Additional Protocol (AP) reporting requirements.**

(a) *Initial report.* If you commenced any of the civil nuclear fuel cycle-related activities described in this paragraph (a) at a location for which you have not previously submitted an *Initial Report* to BIS, you must submit an *Initial Report* to BIS no later than January 31 of the year following the calendar year in which these activities commenced (see supplement no. 1 to this part). You may report any of these activities as part of your *Annual Update Report*, in lieu of submitting a separate *Initial Report*, if you also have an *Annual Update Report* requirement for other civil nuclear fuel cycle-related activities described in this paragraph (a) that applies to the same location and covers the same reporting period (see paragraph (b) of this section). In order to satisfy the *Initial Report* requirements under this paragraph (a), you must complete and submit to BIS Form AP-1, Form AP-2 and other appropriate AP Forms, as specified in this paragraph (a). The appropriate AP Forms must be submitted to BIS via APRS, as provided in §§ 782.5 and 782.6 of the APR.

(1) *Research and development activities not involving nuclear material.* You must submit an *Initial Report* to BIS if you commenced any of the civil nuclear fuel cycle-related research and development activities identified in paragraph (a)(1)(i) or (ii) of this section during the previous calendar year. Activities subject to these reporting requirements include research and development activities related to safe equipment operations for a nuclear fuel cycle-related activity, but do not include activities related to theoretical or basic scientific research or to research and development on industrial radioisotope applications, medical, hydrological and agricultural applications, health and environmental effects and improved maintenance.

(i) You must complete and submit Form AP-3 if you conducted any civil nuclear fuel cycle-related research and development activities defined in § 781.1 of the APR that:

(A) Did not involve nuclear material; and

(B) Were funded, specifically authorized or controlled by, or conducted on behalf of, the United States.

(ii) You must complete and submit Form AP-4 if you conducted any civil nuclear fuel cycle-related research and development activities defined in § 781.1 of the APR that:

(A) Did not involve nuclear material;

(B) Were specifically related to enrichment, reprocessing of nuclear fuel, or the processing of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233 (where “processing” involves the separation of elements); *and*

(C) Were not funded, specifically authorized or controlled by, or conducted on behalf of, the United States.

(2) *Civil nuclear-related manufacturing, assembly or construction activities.* You must submit an *Initial Report* to BIS if you commenced any of the activities specified in supplement no. 2 to this part during the previous calendar year. To report these activities, complete and submit Form AP-5.

(3) *Uranium hard-rock mining and ore beneficiation activities.* You must submit an *Initial Report* to BIS if you commenced operations at a uranium hard-rock mine or an ore beneficiation (concentration) plant during the previous calendar year. This reporting requirement applies not only to the commencement of operations at a location for which you have not previously submitted an *Initial Report* to BIS, but also to the resumption of operations at a mine or ore beneficiation plant that was last reported to BIS as being in “decommissioned” status (see § 781.1 of the APR for the definitions of “uranium hard- rock mine” and uranium hard-rock mines in “operating,” “decommissioned” or “closed-down” status). To report these activities,

complete and submit Form AP-6.

(b) *Annual reporting requirements.* You must submit either an *Annual Update Report* or a *No Changes Report* to BIS if, during the previous calendar year, you continued to engage in civil nuclear fuel cycle-related activities at a location for which you submitted an *Initial Report* to BIS in accordance with the AP reporting requirements described in paragraph (a) of this section.

(1) *Annual Update Report.* You must submit an *Annual Update Report* if you have updates or changes to report concerning either the activities conducted at your location (including the commencement of additional activities) or any information previously submitted on Form AP-1 (other than updates or changes to the certifying official) or Form AP-2 since your most recent report of activities to BIS. When preparing your *Annual Update Report*, you must complete the same AP report forms that you used for submitting your *Initial Report* on these activities and submit them to BIS. However, additional AP report forms will be required if your location engaged in any civil nuclear fuel cycle-related activities described in paragraph (a) of this section that you did not previously report to BIS. The appropriate AP report forms for each type of activity that must be reported are identified in paragraphs (a)(1) through (3) of this section. You must submit your *Annual Update Report* to BIS, via APRS, no later than January 31 of the year following any calendar year in which the activities took place or there were changes to previously reported activities (see supplement no. 1 to this part).

(2) *No Changes Report.* You may submit a *No Changes Report*, in lieu of an *Annual Update Report*, if you have no updates or changes to report concerning either the activities conducted at your location (including the commencement of additional activities) or any information previously reported on Form AP-1 (other than updates or changes to the certifying official) or AP-2 since your most recent report of activities to BIS. In order to satisfy the

reporting requirements under this paragraph (b)(2), you must complete Form AP-17 and submit it to BIS, via APRS, no later than January 31 of the year following any calendar year in which there were no changes to previously “reported” activities or location information (see supplement no. 1 to this part).

(3) *Additional guidance on annual reporting requirements.* (i) If your *Initial Report* or your most recent *Annual Update Report* for a location indicates that all civil nuclear fuel cycle-related activities described therein have ceased at that location, and no other reportable activities have occurred during the previous calendar year, then you do not have a reporting requirement for the location under paragraph (b) of this section.

(ii) If your location ceases to engage in activities subject to the AP reporting requirements described in paragraph (a) of this section, and you have not previously reported this to BIS, you must submit an *Annual Update Report* covering the calendar year in which you ceased to engage in such activities.

(iii) The decommissioned status of a uranium hard-rock mine or ore beneficiation (concentration) plant must be reported by submitting an *Annual Update Report* to BIS covering the calendar year in which the mine or plant was decommissioned. If you subsequently resume operations at a mine or ore beneficiation plant that was last reported to BIS as being in “decommissioned” status, you must submit an *Initial Report* to BIS, as described in paragraph (a)(3) of this section (see § 781.1 of the APR for the definitions of “uranium hard- rock mine” and uranium hard-rock mines in “operating,” “decommissioned” or “closed-down” status).

(c) *Import Confirmation Report.* You must complete Forms AP-1, AP-2 and AP-14 for each

import of equipment or non-nuclear material identified in supplement no. 3 to this part and submit these forms to BIS, via APRS, if BIS sends you written notification requiring that you provide information concerning imports of such equipment and non-nuclear material. These AP report forms must be submitted within 30 calendar days of the date that you receive written notification of this requirement from BIS (see supplement no. 1 to this part). BIS will provide such notification when it receives a request from the IAEA for information concerning imports of this type of equipment or non-nuclear material. The IAEA may request this information to verify that you received specified equipment or non-nuclear material that was shipped to you by a person, organization or government from a foreign country.

(d) *Supplemental Information Report*—(1) *IAEA request for amplification or clarification*. You must complete Forms AP-1, AP-2 and AP-15 and submit them to BIS, via APRS, if BIS sends you written notification requiring that you provide information about the activities conducted at your location, insofar as relevant for the purpose of safeguards. These AP report forms must be submitted within 15 calendar days of the date that you receive written notification of this requirement from BIS (see supplement no. 1 to this part). BIS will provide such notification only if the IAEA specifically requests amplification or clarification concerning any information provided in the U.S. Declaration based on your report(s).

(2) *Changes to information previously reported to BIS*. You must complete Form AP-15 and submit it to BIS, via APRS, to report changes to activity information, organization and location information, ownership of organization and changes related to complementary access within 30 calendar days of any such changes (see § 783.2 and Supplement No.1 to this part).

(e) *Reportable location*. A location that must submit an *Initial Report*, *Annual Update Report* or *No Changes Report* to BIS, pursuant to the requirements of this section, is considered to be a

reportable location with declared activities.

**§783.2 *Changes to information in previously submitted AP reports.***

In order for BIS to maintain accurate information on previously submitted AP reports, including information necessary for BIS to facilitate complementary access notifications or to communicate that specific AP reporting requirements may apply, changes to information submitted by reportable locations in their most recent AP reports must be reported to BIS under the circumstances described in paragraphs (a), (b), and (d) of this section. This section applies only to changes affecting information contained in *Initial Reports* and *Annual Update Reports* that were submitted to BIS in accordance with the requirements of § 783.1(a) and (b) of the APR. The specific report forms that you must use to prepare and submit such changes will depend upon the type of information that you are required to provide, pursuant to this section. Changes to reportable location information must be submitted to BIS via APRS. For additional guidance on how to submit changes to information contained in previously submitted AP reports, contact BIS's Treaty Compliance Division by phone, at (202) 482-1001, or by e-mail, at [aprp@bis.doc.gov](mailto:aprp@bis.doc.gov).

(a) *Changes to activity information.* You must notify BIS within 30 calendar days of the time that you discover an error or omission in your most recent *Initial Report* or *Annual Update Report* that involves information concerning an activity subject to the reporting requirements described in § 783.1(a) or (b) of the APR. Use the *Supplemental Information Report* Form AP-15 to submit these changes to BIS via APRS.

(b) *Changes to organization and location information that must be maintained by BIS—(1) Internal organization changes.* You must notify BIS within 30 calendar days of any change in



the following information (use *Supplemental Information Report* Form AP-15 to submit your changes to BIS via APRS):

- (i) Name of report point of contact (R-POC), including telephone number, facsimile number, and e-mail address;
- (ii) Name(s) of complementary access point(s) of contact (A-POC), including telephone number(s), facsimile number(s) and e-mail address(es);
- (iii) Organization name;
- (iv) Organization mailing address;
- (v) Location owner, including telephone number, and facsimile number; *or*
- (vi) Location operator, including telephone number, and facsimile number.

(2) *Change in ownership of organization.* You must notify BIS if you sold a reportable location or if your reportable location went out of business since submitting your most recent *Initial Report*, *Annual Update Report*, or *No Changes Report* to BIS. You must also notify BIS if you purchased a reportable location that submitted an *Initial Report*, *Annual Update Report*, or *No Changes Report* to BIS for the most recent reporting period, as specified in § 783.1(a) and (b) of the APR. Submit your changes to BIS, via APRS, either before the effective date of the change in ownership or within 30 calendar days after the effective date of the change.

(i) The following information must be submitted to BIS by an organization that is selling or that has sold a reportable location (use *Supplemental Information Report* Form AP-15 to describe your changes and to provide specific details regarding the sale of a reportable location):

- (A) Name of seller (i.e., name of the organization selling a reportable location);
- (B) Reporting Code (this code is assigned to a reportable location after BIS has approved a request to open an APRS account for the location);
- (C) Name of purchaser (i.e., name of the new organization/owner)

purchasing a reportable location) and name and address of contact person for the purchaser, if known;

(D) Date of ownership transfer or change;

(E) Additional details on the sale of the reportable location relevant to ownership or operational control over any portion of the reportable location (e.g., whether the entire location or only a portion of the reportable location has been sold to a new owner); *and*

(F) Details regarding whether the new owner of a reportable location will submit the next report for the entire calendar year in which the ownership change occurred, or whether the previous owner and new owner will submit separate reports for the periods of the calendar year during which each owned the reportable location.

(ii) The following information must be submitted to BIS by an organization that is purchasing or that has purchased a reportable location (use *Supplemental Information Report* Form AP-15 to describe your changes):

(A) Name of purchaser (i.e., name of the new organization/owner purchasing a reportable location) and name and address of contact person for the purchaser;

(B) Details on the purchase of the reportable location relevant to ownership or operational control over any portion of the reportable location (e.g., whether the purchaser intends to purchase and to maintain operational control over the entire location or only a portion of the reportable location); *and*

(C) Details on whether the purchaser intends to continue existing civil nuclear fuel cycle-related activities at the reportable location or to cease such activities during the current reporting period.

(iii) If the new owner of a reportable location is responsible for submitting a report that covers the entire calendar year in which the ownership change occurred, the new owner must obtain and maintain possession of the location's records covering the entire year, including those records for the period of the year during which the previous owner still owned the property.

**NOTE 1 TO § 783.2(b):** *Information that is submitted to BIS to identify changes involving internal organization information or changes in ownership is used only for internal U.S. Government purposes and is not forwarded to the IAEA. BIS uses this information to update contact information for internal oversight purposes and for IAEA complementary access notifications.*

**NOTE 2 TO § 783.2(b):** *For ownership changes, the reportable location will maintain its original Reporting Code, unless the location is sold to multiple owners, at which time BIS will assign a new Reporting Code.*

(c) *Non-substantive changes.* If you discover one or more non-substantive typographical errors in your *Initial Report* or *Annual Update Report*, after submitting the report to BIS, you are not required to submit your corrections, separately, to BIS via APRS. Instead, you may correct these errors when you submit your next *Annual Update Report* to BIS.

(d) *Changes related to complementary access.* If you are required to submit additional information to BIS following the completion of complementary access (see part 784 of the APR), BIS will notify you, in writing, of any issues that would require follow-up action on your part, pursuant to § 784.6 of the APR. Complete and submit *Supplemental Information Report* Form AP-15 and/or the specific report forms required by § 783.1(a) or (b) of the APR, according

to the type(s) of activities for which information is being requested. You must submit your responses to BIS, via APRS, no later than 30 calendar days following your receipt of BIS's post complementary access letter.

### **§783.3 Reports containing information determined by BIS not to be required by the APR.**

If you submit a report and BIS determines that none of the information contained therein is required by the APR, BIS will not process the report and will notify you, either electronically or in writing, explaining the basis for its decision. BIS will not maintain any record of the report. However, BIS will maintain a copy of the notification.

### **§783.4 Deadlines for submission of reports.**

Reports required under this part must be submitted to BIS via APRS, as provided in §§ 782.5 and 782.6 of the APR, no later than the appropriate due date indicated in supplement no. 1 to this part. Required reports include those identified in paragraphs (a) through (e) of this section.

(a) *Initial Report*: Submitted by a location that commenced one or more of the civil nuclear fuel cycle-related activities described in § 783.1(a) of the APR during the previous calendar year, but that has not yet reported such activities to BIS. However, you may report any of these activities as part of your *Annual Update Report*, in lieu of submitting a separate *Initial Report*, if you also have an *Annual Update Report* requirement for other civil nuclear fuel cycle-related activities described in § 783.1(a) of the APR that applies to the same location and covers the same reporting period (see § 783.1(b) of the APR and paragraph (b) of this section).

(b) *Annual Update Report*: Submitted by a reportable location – this report describes updates or

changes to a location's previously reported activities or information, or the commencement of additional activities at the location, since the location's most recent report to BIS.

(c) *No Changes Report*: Submitted by a reportable location, in lieu of an *Annual Update Report*, when there are no updates or changes to a location's previously reported activities or information, and no new activities to report, since the location's most recent report to BIS.

(d) *Import Confirmation Report*: Submitted in response to a written notification from BIS, following a specific request by the IAEA.

(e) *Supplemental Information Report*: Submitted in response to a written notification from BIS, following a specific request by the IAEA, and to report changes to information submitted to BIS by reportable locations in their most recent AP reports.

9. Supplement No. 1 to part 783 is revised to read as follows:

**SUPPLEMENT NO. 1 TO PART 783—DEADLINES FOR SUBMISSION OF REPORTS**

Reports	Applicable forms	Due dates
Initial Report	Forms AP-1 and AP-2 and: —AP-3 or AP-4 for R&D activities; —AP-5 for civil nuclear-related manufacturing, assembly or construction;	January 31 of the year following any calendar year in which you commenced activities at a location for which you have not previously submitted an <i>Initial Report</i> to BIS. If you are required to submit an <i>Annual Update Report</i> because of on-going previously reported activities at the same location, during the same reporting period, you may include

	and —AP-6 for mining and ore beneficiation	the new activities in your <i>Annual Update Report</i> , instead of submitting a separate <i>Initial Report</i> .
Annual Update Report	Forms AP-1 and AP-2 and: —AP-3 or AP-4 for R&D activities; —AP-5 for civil nuclear- related manufacturing, assembly or construction; and —AP-6 for mining and ore beneficiation	January 31 of the year following any calendar year in which changes to location activities or information took place if there were: —Changes to previously reported activities; —Changes or updates to information on Form AP- 1 (other than updates or changes to the certifying official) or Form AP-2; <i>or</i> —New activities not previously reported (included, in lieu of submitting a separate <i>Initial Report</i> , when an <i>Annual Update Report</i> is otherwise required for the same location).
No Changes Report	Form AP-17	January 31 of the year following any calendar year in which there were no changes to previously reported activities or location information (other than updates or changes to the certifying official).
Import Confirmation Report	Forms AP-1, AP-2, and AP-14	Within 30 calendar days of receiving notification from BIS.
Supplemental Information Report	Forms AP-1, AP-2, and AP-15	—Within 15 calendar days of receiving notification from BIS concerning an IAEA request for amplification or clarification.

	Form AP-15	<p>—Within 30 calendar days after:</p> <ul style="list-style-type: none"> <li>• You receive a post-complementary access letter from BIS.</li> <li>• You discover an error or omission in activity information contained in your most recent AP report; <i>or</i></li> <li>• There is a change in company information or in ownership of a location.</li> </ul>
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## **PART 784 – [AMENDED]**

10. The authority citation for 15 CFR part 784 is revised to read as follows:

*Authority:* 22 U.S.C. 8101-8181; Executive Order 13458 (February 4, 2008).

11. Section 784.6 is revised to read as follows:

### **§784.6 Post complementary access activities.**

Upon receiving the IAEA's final report on complementary access, BIS will forward a copy of the report to the location for its review, in accordance with § 784.3(k)(2) of the APR. Locations may submit comments concerning the IAEA's final report to BIS, and BIS will consider them, as appropriate, when preparing its comments to the IAEA on the final report. BIS also will send locations a post complementary access letter detailing the issues that require follow-up action (see § 783.2(d) of the APR).

**PART 785 – [AMENDED]**

12. The authority citation for 15 CFR part 785 is revised to read as follows:

*Authority:* 22 U.S.C. 8101-8181; Executive Order 13458 (February 4, 2008).

**PART 786 – [AMENDED]**

13. The authority citation for 15 CFR part 786 is revised to read as follows:

*Authority:* 22 U.S.C. 8101-8181; Executive Order 13458 (February 4, 2008).

Matthew S. Borman

Deputy Assistant Secretary

for Export Administration

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